



be finalized in the patent case and contract case, and that discovery can move forward in the antitrust case.

In response to Monsanto's repeated complaints, in recent weeks Defendants have grudgingly produced 14,089 documents from their privilege logs, totaling 143,242 pages. Thousands of those pages came from custodians that were already deposed, and their late production has denied Monsanto the opportunity to use these documents at all. The parties are currently scheduling the deposition of Defendants' corporate representatives for the next few weeks, which will likely conclude the patent and contract depositions in this case. An extension will permit Defendants to continue to withhold important, non-privileged documents until following the conclusion of all depositions in the patent and contract cases, and therefore seriously prejudice Monsanto.

That Defendants now purport to need additional time to examine their privilege logs after months of meet-and-confer communications demonstrates Defendants' ongoing abuse of the privilege log process. Defendants admit that they are reviewing their privilege log yet again based on Monsanto's Seventh Motion to Compel, and that the review "is likely to result in the downgrade of many documents" from the log, even though these documents should have been produced long ago. Dkt. 757 at 3. Yet Defendants have known the categories of improperly withheld documents that Monsanto is challenging for *months*.

Finally, the Court's May 17 Order does not justify an extension here. The Court's ruling regarding Defendants' privilege waiver does not resolve the instant motion, which seeks to address Defendants' abuse of the privilege process and obstruction of discovery. Indeed, Defendants have not even indicated whether they will opt to waive the privilege to the extent

they are continuing to rely on unilateral or mutual mistake on their reformation claim. Certainly, until Defendants' clearly state their decision to waive privilege, no delay is warranted.

For all of the foregoing reasons, Defendants' Motion for an Extension of Time should be denied.

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

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